

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

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# California State Board of Education May 2019 Agenda Item #06

## Subject

California Assessment of Student Performance and Progress: Readoption of the Finding of Emergency and Proposed Emergency Regulations for Amendments to the *California Code of Regulations*, Title 5, Sections 850, 851, 854.1, 854.2, 854.3, 854.4, 859, 862, and 863 related to Student Accessibility, Electronic Student Score Reporting and Record Keeping, and Apportionments.

## Type of Action

Action, Information

## Summary of the Issues

In January 2019, the California State Board of Education (SBE) approved the finding of emergency for proposed amendments to Title 5 of the California Code of Regulations (5 *CCR*) sections 850, 854.1, 854.2, 854.3, 854.4, 859, 862, and 863, which were necessary to add accessibility resources for the California Assessment of Student Performance and Progress (CAASPP) System. Proposed emergency amendments to the CAASPP regulations were approved by the Office of Administrative Law (OAL) on January 31, 2019.

The CAASPP regular rulemaking process commenced on January 25, 2019, and the effective date of the permanent regulations is expected at the earliest to occur at the end of July. The emergency regulations will expire on July 31, 2019. The readoption of the emergency regulations is necessary to prevent a possible lapse between the expiration of the emergency regulations and the effective date of the permanent regulations. In the interim, the California Department of Education (CDE) is making substantial progress in finalizing the permanent regulations. The finding of emergency and showing of substantial progress are presented in the attached Finding of Emergency (Attachment 1). The proposed changes to the CAASPP regulations are noted in the attached Notice of Proposed Emergency Action (Attachment 2) and the proposed emergency regulations (Attachment 3).

## Recommendation

The CDE recommends the SBE take the following actions:

* Approve the Finding of Emergency.
* Readopt the proposed emergency regulation amendments.
* Direct the CDE to circulate the required Notice of Proposed Emergency Action, and then resubmit the emergency regulations to the Office of Administrative Law (OAL) for readoption.
* Authorize the CDE to take any necessary action to respond to any direction or concern expressed by the OAL during its review of the Finding of Emergency and proposed emergency regulation amendments.

## Brief History of Key Issues

For a number of years, California implemented a statewide testing program as required by federal law through the Standardized Testing and Reporting (STAR) Program. On October 2, 2013, Governor Brown signed Assembly Bill (AB) 484, deleting the provisions of the *Education Code* (*EC*)referencing the STAR Program and establishing the CAASPP System.

Pursuant to *EC* Section 60640(q), Title 5 of the *California Code of Regulations* (5 *CCR*) Sections 850 through 868 were revised by the SBE to conform to the statutory changes made in AB 484. These amendments revised definitions, requirements, responsibilities, and guidelines for the administration, test security, reporting, and apportionment related to the CAASPP System. The amendments were approved initially as emergency regulations on February 3, 2014, and later approved by the OAL as permanent regulations on August 27, 2014.

Under these newly adopted regulations, the English language arts/literacy (ELA) and mathematics operational assessments took place from March through July 31, 2015, and included the new computer-based assessments provided by the Smarter Balanced Assessment Consortium (Consortium), a consortium composed of member states. The CDE, at the direction of the SBE and in collaboration with CAASPP testing contractor Educational Testing Service (ETS), conducted evaluations of the first operational CAASPP test administration and identified required amendments to be made to the regulations for the second operational administration, including the addition of accessibility resources in alignment with Consortium policy, the addition of a testing window for the new California Alternate Assessments for ELA and mathematics, clarifications to language needed for the new online tests (not necessary for the paper-pencil tests), and minor format and language clarifications. These amendments were approved by the OAL on an emergency basis to allow for the timely preparation and administration of the second operational administration of the CAASPP tests, which occurred in 2016; they also were adopted through the regular rulemaking process and approved by the OAL on May 18, 2016. The CDE successfully carried out the 2015–16 administration of the online CAASPP tests from March 10 through July 31, 2016.

Emergency regulations were approved in time for the third operational administration of the online CAASPP assessments and were adopted as permanent regulations during the fourth operational online CAASPP assessments, which were administered from January 8 through July 16, 2018. During the regular rulemaking process, the Consortium conducted an annual review of accessibility resources and voted on a revised set of accessibility resources published in the *Smarter Balanced Assessment Consortium: Usability, Accessibility, and Accommodations Guidelines* (*Consortium Guidelines*), on June 30, 2017. The following year, the Consortium conducted another annual review of accessibility resources and published a revised *Consortium Guidelines* document on June 28, 2018, which incorporated the 2017 *Consortium Guidelines*.

### Student Accessibility

The Consortium maintains and updates the *Consortium* *Guidelines* document, which includes all universal tools, designated supports, and accommodations that are available for the ELA and mathematics tests and have been determined to pose no threat of changing the measurement of the construct. Each Consortium member state has the option to temporarily approve an accessibility resource requested from the field if the resource is determined to cause no threat of changing the measurement of the construct.

The Consortium conducts an annual review of the *Consortium Guidelines*. The review process considers feedback from Consortium members for the temporary inclusion of accessibility resources. Temporary accessibility resources from the previous test administration that are approved by the governing Consortium members may be added to the *Consortium Guidelines*. Proposed updates to the *Consortium Guidelines* are brought to governing members annually for review, input, and a vote. The review process at the end of the 2016–17 test administration resulted in several changes to the *Consortium Guidelines*, as published on June 30, 2017. Additional changes were made to the *Consortium Guidelines* after the annual review at the end of the 2017–18 test administration, as published on June 28, 2018, which included the changes made in 2017. Pursuant to *EC* Section 60640(q), the CDE recommends proposed changes to  
 5 *CCR* sections 850, 854.1, and 854.2 to conform the state’s ELA and mathematics testing regulations for the CAASPP System with the latest changes to the *Consortium Guidelines*.

The CAASPP contract also specifically indicates that, for all CAASPP non-Consortium assessments, science and primary language, testing contractor ETS must identify the most appropriate accessibility resources for each assessment while maintaining consistency—when the construct necessitates—with the Consortium assessments. Subsequently, the California Science Test (CAST) and the California Spanish Assessment (CSA) are subject to the inclusion of the same Consortium accessibility resources as their constructs necessitate. The CDE, in collaboration with ETS, has decided that many of the same accessibility resources and test settings presented in the revised *Consortium Guidelines* are necessary to provide for the CAST and the CSA in order to ensure that these assessments are valid and reliable and accessible to all pupils, including students with a disability, as required by *EC* sections 60604(a)(1) and 60640(k). To this end, ETS has produced the *CAST Guidelines* and the *CSA Guidelines*, which reflect a detailed review of the *Consortium Guidelines* and recommendations for changes in the use of accessibility resources. Pursuant to *EC* Section 60640(q), the CDE recommends proposed changes to 5 *CCR* sections 854.3 and 854.4 to conform the state’s CAST and CSA testing regulations for the CAASPP System.

### Apportionment

Assessment apportionment funding is provided to LEAs to reimburse them for the costs associated with administering the CAASPP System. The amount to be apportioned to each LEA is based on the number of pupils tested during each school year. The LEA apportionment rate, per pupil per test, is established by the SBE. Apportionments are not paid to LEAs until the following fiscal year, after all testing has been completed for the school year.

Current regulations require each LEA to certify their apportionment data, in order to obtain their apportionment reimbursement, by the regulatory deadline of March 1. The CDE has each LEA utilize an online application, the State Assessment Apportionment System, to certify that their data is accurate. If an LEA fails to certify their data within the system by the regulatory deadline, the LEA is required to submit a waiver to the SBE.

The waiver process requires an LEA to hold a public hearing, have its request approved by its governing board, and then submit its request to the CDE Waiver Office and have it approved by the SBE. Once it has been heard and approved by the SBE, an LEA can then be paid its apportionment.

Due to the short regulatory deadline window, a large number of LEAs are unable to meet the deadline for returning their apportionment reports. This requires them to go through the waiver process in order to receive reimbursement for the work they have completed. The current waiver process can be cumbersome and prohibitive for many LEAs, sometimes to the point that they go without receiving their apportionment funds rather than proceed through the waiver process. The CDE proposes to streamline the apportionment payment process and remove the barriers that LEAs face when applying for their funds by removing the March 1 deadline and, thus, the need to submit a waiver request as set forth in the proposed changes to Section 862.

### Electronic Student Score Reports and Recordkeeping

With the migration away from administering paper-pencil tests to students, many of the CAASPP processes and procedures are transitioning to an electronic format. Student Score Reports are being designed for electronic delivery, and procedures to electronically sign security agreements and affidavits are being proposed for implementation. The proposed amendments to sections 850 and 859 of the regulations include clarifying language about the electronic recordkeeping of the designation of LEA coordinators and the records of signed security agreements and affidavits. The goals of these changes are to introduce efficiencies for superintendents in the designation of LEA coordinators and to streamline the receipt of signed security agreements and security affidavits by the LEA coordinators and site-level users, including site coordinators. These solutions will introduce efficiencies to the designation process for superintendents and LEA coordinators by allowing them to roll over existing users instead of using the current manual entry process and will streamline the designation and storage of security agreements and security affidavits.

### Delivery of Score Reports

LEAs are responsible for ensuring that parents or guardians of the student receive a copy of their Student Score Report within 20 days of receipt of the results from the testing contractor. Sometimes, students have transferred schools in the interim. Section 863 has been amended to clarify which LEA is responsible for providing the score report in cases in which a student has transferred to a new LEA.

### Highlights of Proposed Changes

In its efforts to make substantial progress in the permanent rulemaking process, the CDE is proposing the following amendments and providing them for a 15-day comment period include the following:

* Amending section 851 to include recordkeeping efficiencies brought about by the transition to electronic processes by replacing “signed” with “electronically agreed to.”
* Amending section 854.3 to remove color contrast from the universal tool section, as it appears as a designated support for science to ensure educator involvement in assigning color contrast when appropriate.
* Amending section 859 to reflect the transition to electronic processes.
* Amending section 863 to indicate that the words “make the” and “available” were added to the proposed regulations for the 45-day comment period but were not correctly indicated by underscores at that time.

These changes, as well as the amendments to the emergency regulations adopted by the SBE at its January meeting, are indicated on the attached regulations (Attachment 3).

## Summary of Previous California State Board of Education Discussion and Action

At its January 2019 meeting, the SBE approved the Finding of Emergency and emergency regulations to allow for the timely preparations for the administration and reporting of the spring 2019 CAASPP administration. In addition, the SBE approved the commencement of permanent rulemaking for the proposed amendments to the CAASPP regulations. <https://www.cde.ca.gov/be/mt/ms/documents/finalminutes0910jan2019.docx>

At its November 2017 meeting, the SBE approved the changes to the CAASPP regulations and asked that the changes to regulations be circulated for a second 15-day comment period. <https://www.cde.ca.gov/be/mt/ms/documents/finalminutes0809nov2017.docx>

At its September 2017 meeting, the SBE approved the second readoption of the Finding of Emergency and proposed emergency regulations for amendments to 5 *CCR*, sections 851 through 856. <https://www.cde.ca.gov/be/ag/ag/yr17/agenda201709.asp>

At its July 2017 meeting, the SBE approved the changes to the CAASPP regulations and asked that the changes to the regulations be circulated for a 15-day comment period. <https://www.cde.ca.gov/be/ag/ag/yr17/agenda201707.asp>

At its May 2017 meeting, the SBE approved the readoption of the Finding of Emergency and proposed emergency regulations for amendments to the 5 *CCR*, sections 851 through 856.

<https://www.cde.ca.gov/be/ag/ag/yr17/documents/may17item05.doc>

At its March 2017 meeting, the SBE approved the commencement of permanent rulemaking for the proposed amendments to the CAASPP regulations.

<https://www.cde.ca.gov/be/ag/ag/yr17/documents/mar17item10.doc>

At its January 2017 meeting, the SBE approved the Finding of Emergency and emergency regulations to allow the timely preparations for the administration and reporting of the spring 2017 CAASPP administration.

<https://www.cde.ca.gov/be/ag/ag/yr17/documents/jan17item08a4.pdf>

At its May 2016 meeting, the SBE approved the revised Finding of Emergency and approved the readoption of the emergency CAASPP regulations to the CAASPP regulations to continue in place pending the OAL’s approval of the revised permanent regulations. <https://www.cde.ca.gov/be/ag/ag/yr16/documents/may16item10.doc>

At its March 2016 meeting, the SBE approved changes to the proposed permanent regulations and directed that the amended regulations be circulated for a 15-day public comment period, March 10–25, 2016, and, assuming no relevant comments to the proposed changes were received, directed the CDE to deem the proposed permanent regulations adopted. (No relevant comments were received, and the revised permanent regulations were approved by the OAL on May 16, 2016.)

<https://www.cde.ca.gov/be/ag/ag/yr16/documents/mar16item04.doc>

At its November 2015 meeting, the SBE adopted the proposed amendments to the CAASPP regulations as emergency regulations. The emergency regulations were approved by the OAL and became effective on November 23, 2015. In addition, the SBE approved the commencement of the regular rulemaking process for permanent amendments to the CAASPP regulations. <https://www.cde.ca.gov/be/ag/ag/yr15/documents/nov15item05-revised.doc>;

<https://www.cde.ca.gov/be/ag/ag/yr15/documents/nov15item06-revised.doc>

At its July 2014 meeting, the SBE readopted the emergency regulations for the CAASPP. The emergency readoption rulemaking file was submitted to the OAL on July 16, 2014. The readoption of the emergency regulations was approved by the OAL on July 23, 2014. In addition, the SBE adopted the permanent rulemaking file at its July 2014 meeting. The rulemaking file was submitted to the OAL on July 16, 2014, and permanent regulations for CAASPP were approved and became effective on August 27, 2014.

<https://www.cde.ca.gov/be/ag/ag/yr14/documents/jul14item08.doc>;

<https://www.cde.ca.gov/be/ag/ag/yr14/documents/jul14item09.doc>

At its January 2014 meeting, the SBE, for the first time, adopted proposed emergency regulations for CAASPP. The emergency regulations were approved by the OAL and became effective on February 3, 2014. In addition, the SBE approved the commencement of the regular rulemaking process for the permanent regulations. <https://www.cde.ca.gov/be/ag/ag/yr14/documents/jan14item06.doc>;

<https://www.cde.ca.gov/be/ag/ag/yr14/documents/jan14item05.doc>

## Fiscal Analysis

An Economic and Fiscal Impact Statement is provided as Attachment 4.

## Attachment(s)

* Attachment 1: Notice of Proposed Emergency Action (1 page)
* Attachment 2: Finding of Emergency (3 pages)
* Attachment 3: Proposed Emergency Regulations (26 pages)
* Attachment 4: Economic and Fiscal Impact Statement (STD. 399) (5 pages)